

Todd M. Friedman (216752)
Suren N. Weerasuriya (278521)
Adrian R. Bacon (280332)
Law Offices of Todd M. Friedman, P.C.
324 S. Beverly Dr. #725
Beverly Hills, CA 90212
Phone: (877) 206-4741
Fax: (866)633-0228
tfriedman@attorneysforconsumers.com
sweerasuriya@attorneysforconsumers.com
abacon@attorneysforconsumers.com

Attorneys for Plaintiff

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

EDWARD MAKARON, on behalf of himself) Case No.
and all others similarly situated,)

Plaintiff,)

vs.)

ENAGIC USA, INC.,)

Defendant.)

CLASS ACTION

COMPLAINT FOR VIOLATIONS OF:

1. NEGLIGENT VIOLATIONS OF THE
TELEPHONE CONSUMER
PROTECTION ACT [47 U.S.C. §227 ET
SEQ.]
2. WILLFUL VIOLATIONS OF THE
TELEPHONE CONSUMER
PROTECTION ACT [47 U.S.C. §227 ET
SEQ.]

DEMAND FOR JURY TRIAL

Plaintiff, Edward Makaron ("Plaintiff"), on behalf of himself and all others similarly
situated, alleges the following upon information and belief based upon personal knowledge:

NATURE OF THE CASE

1. Plaintiff brings this action for himself and others similarly situated seeking
damages and any other available legal or equitable remedies resulting from the illegal actions
of ENAGIC USA, INC. ("Defendant"), in negligently, knowingly, and/or willfully contacting

1 Plaintiff on Plaintiff's cellular telephone in violation of the Telephone Consumer Protection
2 Act, 47 U.S.C. § 227 *et seq.* ("TCPA"), thereby invading Plaintiff's privacy.

3
4 **JURISDICTION & VENUE**

5 2. Jurisdiction is proper under 28 U.S.C. § 1332(d)(2) because Plaintiff, a resident
6 of California, seeks relief on behalf of a Class, which will result in at least one class member
7 belonging to a different state than that of Defendant, a company with its principal place of
8 business and State of Incorporation in California state. Plaintiff also seeks up to \$1,500.00 in
9 damages for each call in violation of the TCPA, which, when aggregated among a proposed
10 class in the thousands, exceeds the \$5,000,000.00 threshold for federal court jurisdiction.
11 Therefore, both diversity jurisdiction and the damages threshold under the Class Action
12 Fairness Act of 2005 ("CAFA") are present, and this Court has jurisdiction.

13
14 3. Venue is proper in the United States District Court for the Central District of
15 California pursuant to 18 U.S.C. 1391(b) and 18 U.S.C. § 1441(a) because Defendant does
16 business within the state of California and Plaintiff resides within this District.

17 **PARTIES**

18
19 4. Plaintiff, EDWARD MAKARON ("Plaintiff"), is a natural person residing in
20 Chatsworth, California and is a "person" as defined by 47 U.S.C. § 153 (10).

21 5. Defendant, ENAGIC USA, INC. ("Defendant"), is a nationwide distributor of
22 alkaline water filtration systems and is a "person" as defined by 47 U.S.C. § 153 (10).

23
24 **FACTUAL ALLEGATIONS**

25 6. Beginning in or around May of 2015, Defendant contacted Plaintiff on his
26 cellular telephone, (310) 210-3272, in an effort to sell or solicit its services.

27 7. On May 18, 2015, Plaintiff received a call from Defendant from telephone
28 number 469-340-4080. Defendant utilized an "artificial or prerecorded voice" as prohibited by

1 47 U.S.C. § 227(b)(1)(A).

2 8. On May 20, 2015, Plaintiff received a call from one of Defendant's
3 representatives, who tried to recruit Plaintiff as a salesperson for Defendant, and suggested
4 Plaintiff watch a video about Defendant's products.

5 9. Defendant used an "automatic telephone dialing system", as defined by 47
6 U.S.C. § 227(a)(1) to place its daily calls to Plaintiff seeking to sell or solicit its business
7 services.
8

9 10. Defendant's calls constituted calls that were not for emergency purposes as
10 defined by 47 U.S.C. § 227(b)(1)(A).

11 11. Defendant's calls were placed to telephone number assigned to a cellular
12 telephone service for which Plaintiff incurs a charge for incoming calls pursuant to 47 U.S.C. §
13 227(b)(1).
14

15 12. Plaintiff is not a customer of Defendant's services and has never provided any
16 personal information, including his cellular telephone number, to Defendant for any purpose
17 whatsoever. Accordingly, Defendant never received Plaintiff's "prior express consent" to
18 receive calls using an automatic telephone dialing system or an artificial or prerecorded voice
19 on his cellular telephone pursuant to 47 U.S.C. § 227(b)(1)(A).
20

21 **CLASS ALLEGATIONS**
22

23 13. Plaintiff brings this action on behalf of himself and all others similarly situated,
24 as a member of the proposed class (hereafter "The Class") defined as follows:
25

26 All persons within the United States who received any telephone
27 calls from Defendant to said person's cellular telephone made
28 through the use of any automatic telephone dialing system or an
artificial or prerecorded voice and such person had not previously
consented to receiving such calls within the four years prior to

1 the filing of this Complaint.

2 14. Plaintiff represents, and is a member of, The Class, consisting of All persons
3 within the United States who received any telephone calls from Defendant to said person's
4 cellular telephone made through the use of any automatic telephone dialing system or an
5 artificial or prerecorded voice and such person had not previously not provided their cellular
6 telephone number to Defendant within the four years prior to the filing of this Complaint.
7

8 15. Defendant, its employees and agents are excluded from The Class. Plaintiff
9 does not know the number of members in The Class, but believes the Class members number in
10 the thousands, if not more. Thus, this matter should be certified as a Class Action to assist in
11 the expeditious litigation of the matter.
12

13 16. The Class is so numerous that the individual joinder of all of its members is
14 impractical. While the exact number and identities of The Class members are unknown to
15 Plaintiff at this time and can only be ascertained through appropriate discovery, Plaintiff is
16 informed and believes and thereon alleges that The Class includes thousands of members.
17 Plaintiff alleges that The Class members may be ascertained by the records maintained by
18 Defendant.
19

20 17. Plaintiff and members of The Class were harmed by the acts of Defendant in at
21 least the following ways: Defendant illegally contacted Plaintiff and Class members via their
22 cellular telephones thereby causing Plaintiff and Class members to incur certain charges or
23 reduced telephone time for which Plaintiff and Class members had previously paid by having to
24 retrieve or administer messages left by Defendant during those illegal calls, and invading the
25 privacy of said Plaintiff and Class members.
26

27 18. Common questions of fact and law exist as to all members of The Class which
28

1 predominate over any questions affecting only individual members of The Class. These
2 common legal and factual questions, which do not vary between Class members, and which
3 may be determined without reference to the individual circumstances of any Class members,
4 include, but are not limited to, the following:

- 5 a. Whether, within the four years prior to the filing of this Complaint,
6 Defendant made any call (other than a call made for emergency purposes
7 or made with the prior express consent of the called party) to a Class
8 member using any automatic telephone dialing system or any artificial or
9 prerecorded voice to any telephone number assigned to a cellular
10 telephone service;
- 11 b. Whether Plaintiff and the Class members were damages thereby, and the
12 extent of damages for such violation; and
- 13 c. Whether Defendant should be enjoined from engaging in such conduct in
14 the future.

15 19. As a person that received numerous calls from Defendant using an automatic
16 telephone dialing system or an artificial or prerecorded voice, without Plaintiff's prior express
17 consent, Plaintiff is asserting claims that are typical of The Class.

18 20. Plaintiff will fairly and adequately protect the interests of the members of The
19 Class. Plaintiff has retained attorneys experienced in the prosecution of class actions.

20 21. A class action is superior to other available methods of fair and efficient
21 adjudication of this controversy, since individual litigation of the claims of all Class members
22 is impracticable. Even if every Class member could afford individual litigation, the court
23 system could not. It would be unduly burdensome to the courts in which individual litigation
24 of numerous issues would proceed. Individualized litigation would also present the potential
25 for varying, inconsistent, or contradictory judgments and would magnify the delay and expense
26 to all parties and to the court system resulting from multiple trials of the same complex factual
27 issues. By contrast, the conduct of this action as a class action presents fewer management
28 difficulties, conserves the resources of the parties and of the court system, and protects the

1 rights of each Class member.

2 22. The prosecution of separate actions by individual Class members would create a
3 risk of adjudications with respect to them that would, as a practical matter, be dispositive of the
4 interests of the other Class members not parties to such adjudications or that would
5 substantially impair or impede the ability of such non-party Class members to protect their
6 interests.
7

8 23. Defendant has acted or refused to act in respects generally applicable to The
9 Class, thereby making appropriate final and injunctive relief with regard to the members of the
10 California Class as a whole.
11

12
13 **FIRST CAUSE OF ACTION**
14 **Negligent Violations of the Telephone Consumer Protection Act**
15 **47 U.S.C. §227 et seq.**

16 24. Plaintiff repeats and incorporates by reference into this cause of action the
17 allegations set forth above at Paragraphs 1-25.

18 25. The foregoing acts and omissions of Defendant constitute numerous and
19 multiple negligent violations of the TCPA, including but not limited to each and every one of
20 the above cited provisions of *47 U.S.C. § 227 et seq.*

21 26. As a result of Defendant's negligent violations of *47 U.S.C. § 227 et seq.*,
22 Plaintiff and the Class Members are entitled an award of \$500.00 in statutory damages, for
23 each and every violation, pursuant to *47 U.S.C. § 227(b)(3)(B)*.
24

25 27. Plaintiff and the Class members are also entitled to and seek injunctive relief
26 prohibiting such conduct in the future.
27

28 ///

SECOND CAUSE OF ACTION

**Knowing and/or Willful Violations of the Telephone Consumer Protection Act
47 U.S.C. §227 et seq.**

28. Plaintiff repeats and incorporates by reference into this cause of action the allegations set forth above at Paragraphs 1-29.

29. The foregoing acts and omissions of Defendant constitute numerous and multiple knowing and/or willful violations of the TCPA, including but not limited to each and every one of the above cited provisions of 47 U.S.C. § 227 et seq.

30. As a result of Defendant's knowing and/or willful violations of 47 U.S.C. § 227 et seq., Plaintiff and the Class members are entitled an award of \$1,500.00 in statutory damages, for each and every violation, pursuant to 47 U.S.C. § 227(b)(3)(B) and 47 U.S.C. § 227(b)(3)(C).

31. Plaintiff and the Class members are also entitled to and seek injunctive relief prohibiting such conduct in the future.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff requests judgment against Defendant for the following:

FIRST CAUSE OF ACTION

**Negligent Violations of the Telephone Consumer Protection Act
47 U.S.C. §227 et seq.**

- As a result of Defendant's negligent violations of 47 U.S.C. §227(b)(1), Plaintiff and the Class members are entitled to and request \$500 in statutory damages, for each and every violation, pursuant to 47 U.S.C. 227(b)(3)(B); and
- Any and all other relief that the Court deems just and proper.

SECOND CAUSE OF ACTION

**Knowing and/or Willful Violations of the Telephone Consumer Protection Act
47 U.S.C. §227 et seq.**

- As a result of Defendant's willful and/or knowing violations of 47 U.S.C. §227(b)(1), Plaintiff and the Class members are entitled to and request treble

1 damages, as provided by statute, up to \$1,500, for each and every violation,
2 pursuant to 47 U.S.C. §227(b)(3)(B) and 47 U.S.C. §227(b)(3)(C); and

- 3 • Any and all other relief that the Court deems just and proper.

4
5 **DEMAND FOR JURY TRIAL**

6 Plaintiff demands a trial by jury of each and every claim so triable.

7
8 Respectfully Submitted this 8th Day of July, 2015.

9
10 LAW OFFICES OF TODD M. FRIEDMAN, P.C.

11 By: /s/ Todd M. Friedman
12 Todd M. Friedman
13 Law Offices of Todd M. Friedman
14 Attorney for Plaintiff
15
16
17
18
19
20
21
22
23
24
25
26
27
28